IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1613 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ANAND R BHATT

Versus

GUJARAT STATE CIVIL SUPPLIES CORPORATION LTD.

Appearance:

1. Special Civil Application No. 1613 of 1992

MS SANGITA PAHWA FOR MR PM THAKKAR for Petitioner No. 1

MR KM PATEL for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 01/03/2004

ORAL JUDGEMENT

This petition is filed under Article 226 of the Constitution of India challenging the order of termination dated 5.3.92 passed by the respondent

Corporation on the ground that the services of the petitioner are not required to the Corporation and as per condition No.9 of the appointment order, agreement of service has come to an end.

2. It is the case of the petitioner that the petitioner had applied on 12th December, 1990 to the respondent Corporation and the Selection Committee of the respondent Corporation, constituted as per the rules and norms of recruitment, selected the petitioner at the interview held and after following proper procedure. Pursuant to the said appointment, a contract was executed between the petitioner and the respondent Corporation for appointment to the post of Assistant (Marketing) in the Marketing Development Cell of the Corporation. It was, inter alia, stated in the said agreement that the period of service of the petitioner will be one year and that it will be governed by the Staff Service Rules of the respondent Corporation. It was further stated that the petitioner was initially appointed at Kalpataru Stores at Gandhinagar and thereafter the petitioner was allocated the work at Kalpataru Departmental Stores at Vastrapur, Ahmedabad. While allocating the work at the Departmental Stores at Vastrapur, Ahmedabad vide order dated 17.7.91, it was stated that on receipt of the said order, the concerned employee's service would come to an end and he would be required to attend the new place of duty till further order was passed in the matter. It was further stated that there was an incident taken place on 14.2.92 with one Mr.Mehta and there was quarrel between the petitioner and said Mr.Mehta and as a result of the said quarrel, preliminary inquiry was initiated against the petitioner and thereafter the impugned order dated 5.3.92 was passed against the petitioner terminating the services of the petitioner. It is this order of termination which is challenged in the present petition.

3. Ms.Sangita Pahwa, learned advocate for the petitioner submits that the initial appointment of the petitioner was for one year with effect from 28th December 1990 and that one year's period was over on 28th December 1991. As per clause (1) of the said agreement, the petitioner's service was purely on temporary basis. Clause (9) of the said agreement states that the petitioner's appointment was on temporary basis for a period of one year and after the expiry of the said period, his services would come to an end automatically. It was also stated in the said clause that before the period of one year would come to an end, if the petitioner desired to leave the services, then one month's notice was required to be given. However, no

such obligation was cast on the employer and without any notice, the Corporation could discharge the petitioner from the services. Ms. Pahwa has further submitted that this clause contained in the agreement itself is arbitrary as though a duty is cast upon the petitioner to give notice, no such duty or obligation is cast on the respondent Corporation. She has further submitted that as soon as the petitioner was transferred from Gandhinagar to Ahmedabad by the order dated 17.7.91, the earlier agreement dated 28th December 1990 had come to an end and the order dated 17.7.91 did not contain any clause with regard to the termination and no period was prescribed in the said order. She has also submitted that the petitioner's services could not have been terminated on the basis of clause (9) of the agreement as the said agreement did not exist on 5.3.92 when the petitioner's services were terminated. She has further submitted that the respondent Corporation has stated in the termination order that the petitioner's services were not required, but there was no basis for such ground. According to the petitioner, as a matter of fact, other persons recruited along with the petitioner were continued in service and their services were confirmed and that there was no basis for the alleged ground that there was no sufficient work or that the petitioner was not found suitable for the post and without assigning reasons, the services of the petitioner were terminated by the order dated 5.3.92. She has fairly stated that in the affidavit-in-reply, the respondent for the first time has come out with a case that the services of the petitioner were not found satisfactory. However, it is not open to the respondent Corporation to adopt this course of action as the respondent cannot travel beyond the scope of the termination order. In this connection, Ms.Pahwa has relied on a decision of the Hon'ble Supreme Court in the case of Commissioner of Police v. Gordhandas, AIR 1952 SC 16, wherein it is held in para 9 of the judgment as follows:-

> "9. An attempt was made by referring to the Commissioner's affidavit to show that this was really an order of cancellation made by him and that the order was his order and not that of Government. We are clear that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind; or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the

actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

She has further relied on the Service Rules framed by the respondent Corporation particularly the provisions of discharge of determination of service during the probation period. Clause 24(2) of the Service Rules of the Gujarat State Civil Supplies Corporation Limited provides that without prejudice to the provisions of the rule the services of a temporary employee shall be deemed to be terminated if his appointment is made for a specific period, on the expiry of such period, or if his appointment is made against a temporary post, on the abolition of the post or on the expiry of the period for which the post is created.

4. On the basis of the above Rules, she has submitted that the petitioner's appointment was initially made for one year, but even after the expiry of the period of one year, the services of the petitioner were continued. She has further submitted that the order dated 17.9.91 did not specify any period. Even the petitioner's appointment was not against any temporary post and there was no question of abolition of temporary post. It is, therefore, submitted that the petitioner's appointment could not have been considered on any temporary post and even with regard to termination of services of temporary employees, notice is required to be issued and since the respondent Corporation has not done so, there is violation of principles of natural justice. She has relied on a decision of the Hon'ble Supreme Court in the case of V.P.Ahuja v. State of Punjab, AIR 2000 SC 1080 wherein it is held that a probationer or a temporary servant is also entitled to certain protection and his services cannot be terminated arbitrarily, nor can those services be terminated in a punitive manner without complying with the principles of natural justice.

5. Ms.Pahwa has further relied on a decision of the Hon'ble Supreme Court in the case of Nar Singh Pal v. Union of India, AIR 2000 SC 1401 wherein also the same principle was reiterated and it was held that when the termination of the employee from service was punitive in nature and was in violation of principles of natural justice and his Constitutional rights, such an order cannot be sustained. Ms.Pahwa has further submitted that the impugned order of termination was malafide in nature and though it was not stated in the order, it was based on an incident which had taken place on 14th February

1992. She has specifically stated that the petitioner had a quarrel with one Mr.Mehta and Mr.Mehta was the brother of a Revenue Officer in the State Government and was also a friend of the General Manager (Administration) and a false complaint was filed against the petitioner. Pursuant to that, an inquiry was initiated against the petitioner and based on the said inquiry, the impugned action of termination was taken against the petitioner. It is thus based on extraneous consideration and it is nothing but an arbitrary exercise of power vested in the Officers of the respondent Corporation and, therefore, the order deserves to quashed and set aside.

6. Mr.K.M.Patel, learned advocate appearing for the respondent Corporation has submitted that the petitioner was initially appointed only for one year and he was not confirmed on the post. Hence for all purposes, the petitioner can be considered as a temporary employee. He has invited my attention to the Recruitment and Promotion Rules, 1985 of the respondent Corporation. Clause 8 of the said Rules deals with direct recruitment. The petitioner being a direct recruit, the said rule is applicable to him. Clause 8(iii) (a) states that the first appointment to a post by way of direct recruitment shall be made on probation for a period not exceeding one year. The period of probation shall be liable to be extended at the discretion of the appointing authority. However, the total period of probation of the employee on aggregate will normally not exceed two years. On the basis of this rule, he has submitted that so far as the petitioner is concerned, his appointment was purely on contractual basis and the contract was for a period of one year and that he was not even a probationer. It is, therefore, submitted that the respondent Corporation was within its powers to terminate the services of the petitioner. He has further submitted that for termination of an employee appointed under a contractual agreement or on temporary nature, no notice is required to be given. He has further submitted that the impugned order of termination is a termination simpliciter and nothing is alleged against the petitioner and it cannot be termed as a punitive order. For this purpose, he has relied on a Division Bench decision of this Court in the case of Rajput Kanaiyalal Babulal v. Chairman, IOC, 2003(2) GLH 578 wherein a Division Bench of this Court has observed that in the case of a probationer and especially when the order of termination simpliciter is passed by the employer, no opportunity of any explanation is required to be given to the employee. The Court has also taken the view that when the order of termination unquestionably is in the nature of termination

simpliciter and no stigma was attached with that order since it was not a punitive order, there was no question of violation of principles of natural justice nor it is contrary to the Constitutional provisions contained in Articles 14 and 16 of the Constitution of India. The Court has further taken the view that on the basis of the facts stated in the affidavit, it cannot be said that the order passed by the authorities is a punitive order. The Court has held that an affidavit cannot be relied on to improve or supplement an order and equally an order which is otherwise valid cannot be invalidated by reason of any statement in any affidavit seeking to justify the order.

7. Mr.Patel has also relied on a decision of the Hon'ble Supreme Court in the case of Mathew P. Thomas v. Kerala State Civil Supply Corporation Ltd., (2003) 3 SCC 263 wherein also the Hon'ble Supreme Court has taken the view that it is now settled that whether an order of termination is simpliciter or punitive has ultimately to be decided having due regard to the facts and circumstances of each case. The Court has further observed that sometimes the facade of the termination order may be simpliciter, but the real face behind it is to get rid of the services of a probationer on the basis of misconduct. In such cases, it becomes necessary to travel beyond the order of termination simpliciter to find out what in reality is the background and what weighed with the employer to terminate the services of a probationer. In that process, it also becomes necessary to find out whether efforts were made to find out the suitability of the person to continue in service or he is in reality removed from service on the foundation of his misconduct. Mr.Patel has further relied on a decision of the Hon'ble Supreme Court in the case of Pavanendra Narayan Verma v. SGPGI of Medical Sciences, (2002) 1 SCC 520. A Division Bench of this Court has taken into consideration this case while deciding the case of Rajput Kanaiyalal Babulal (supra) wherein this Court has pointed the latest law on the point.

8. Mr.Patel has further relied on a decision of the Hon'ble Supreme Court in the case of Registrar, M.P.High Court v. Satya Narayan Jhavar, AIR 2001 SC 3234 for the proposition that continuance of a probationer on expiry of maximum period of probation is not deemed confirmation. The Court has also negatived the contention of confirmation by implication and held that the termination on the ground of unsuitability without holding inquiry is valid. Mr. Patel has lastly relied on a decision of the Hon'ble Supreme Court in the case of State of UP v. Kaushal Kishore Shukla, (1991) 1 SCC 691

for the proposition that the principle of 'last come first go' would be inapplicable where the termination of service of a senior is effected for unsuitability on assessment of work in terms of contract and service rules while retaining the juniors. The Court has held that there was no violation of Articles 14 and 16 of the Constitution of India in such a situation. He has also relied on this decision for the proposition that the termination of service of an ad-hoc or temporary government servant would be termination simpliciter in terms of contract of service and Rules and that can also be effected on assessment of suitability on consideation of adverse entry and preliminary inquiry report. This type of termiantion order would be held as valid and not punitive so as to attract Article 311(2) of the Constitution of India.

9. As far as allegation with regard to malafide is concerned, Mr.Patel has submitted that the petitioner has not adduced any evidence whatsoever and vague statements are made in the petition and the relationship shown is also farfetched which has no bearing on the issue and hence it cannot be said that the order of termination is based on alleged malafide.

10. Taking overall view of the matter and considering the authorities, Mr.Patel has submitted that the order of termination passed by the respondent Corporation is proper and no interference is called for by his Court while exercising power under Article 226 of the Constitution of India.

11. After having heard the learned advocates appearing for the respective parties and after considering the pleadings in the petition as well as the affidavit in reply and after having given my anxious thoughts to the authorities cited before me and relied upon in support of the respective stand, I am of the view that the impugned order of termination passed by the respondent Corporation on 5.3.92 cannot be in any way termed as order which is punitive in nature. The order on the face of it says that the respondent does not require the services of the petitioner. Since the petitioner's appointment was initially for a period of one year and that period of one year expired on 28.12.1991 and during this period, the petitioner was transferred to other place by virtue of order dated 17.7.91, it cannot be said that the petitioner has assumed any vested right in the employment. It is true that the agreement dated 28th December 1990 has come to an end no sooner the petitioner was transferred and fresh

order was passed on 17.7.91. However, fresh appointment was in pursuance of the earlier order dated 28th December 1990, as de hors the said agreement or appointment order, the petitioner has no other right or no role to play and hence considering this appointment, if the respondent Corporation found that the petitioner's services are not required, it is open for them to take such a step. The said order also cannot be said to be in violation of principles of natural justice as it is not punitive in nature. The authorities cited by Mr.Patel, learned advocate for the respondent, amply demonstrate that this is an order of termination simpliciter and if the said order is challenged by the petitioner and in Affidavit in reply to the said petition, if something is stated to the effect that the petitioner was not found suitable for the post, it does not mean that the respondent Corporation has travelled beyond the scope of the termination order. The order of termination remains silent on the same and no malice or motive is imputed in the order. It is, therefore, clear that no opportunity was required to be given. As far as Service Rules relied on by both the sides are concerned, the petitioner's status is that of a temporary employee and since service of a temporary employee is sought to be terminated, as held by the Hon'ble Supreme Court in the cases referred to hereinabove, no notice is required to be given and no explanation is necessary when the order is not a punitive order. Hence, this Court is of the view that there is no violation of principles of natural justice. One of the contentions which was raised by Ms.Pahwa that the order is malafide is also without any substance as there were only vague allegations made in the petition. The causal connection sought to be established between the incident in question and the termination is not inspiring any confidence of the Court which would ultimately lead to accept the case canvassed before the Court.

12. Taking overall view of the matter and considering the entire facts and circumstances of the case as well as the authorities cited before the Court, I am of the view that the order passed by the respondent Corporation is just and proper and it does not require any interference of this Court while exercising the powers under Article 226 of the Constitution of India.

13. The petition is, therefore, dismissed. Rule discharged without any order as to costs.

(K.A.Puj, J.)
(vjn)